(Slip Opinion)

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BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In re:	
Federated Oil & Gas of Traverse City, Michigan	UIC Appeal No. 95-38
Permit No. MI-101-2D-0041 851	

[Decided January 8, 1997]

ORDER DENYING REVIEW

Before Environmental Appeals Judges Ronald L. McCallum, Edward E. Reich and Kathie A. Stein.

FEDERATED OIL & GAS OF TRAVERSE CITY, MICHIGAN

UIC Appeal No. 95-38

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Decided January 8, 1997

Syllabus

James and Alice Valentine ("Petitioners") of Bear Lake Township, Michigan, seek review of an Underground Injection Control ("UIC") permit issued by U.S. EPA Region V. The permit would authorize Federated Oil & Gas ("Federated") to operate a Class II injection well on property leased from the Petitioners, for the non-commercial disposal of waste fluids brought to the surface by Federated in connection with oil or natural gas production elsewhere in Michigan.

In their petition for review, the Petitioners chiefly contend that Region V should have denied Federated's permit application because the lease agreement between Federated and the Petitioners does not authorize the operation of an injection well on the leased premises. The Petitioners further contend that certain producing wells located on Petitioners' property, operated by entities other than Federated, have caused damage to the property in the past. They express concern regarding Federated's own willingness to comply with applicable regulatory requirements, alleging that Federated connected piping to the proposed Class II injection well on their property before obtaining a permit for that well. In addition, Petitioners object to the issuance of this permit because they are not confident that the permit will be conscientiously enforced by the appropriate government agencies, and because they fear that the permit will eventually be sold to a "commercial" injection well operator who will accept waste from many different sources. Finally, Petitioners argue that the Region's permit decision is erroneous because it does not expressly limit the permissible injection rate for the well on their property, and because they believe the cement used in constructing the well is not sufficiently dense to provide an effective casing.

Held: The Board has no authority to resolve disputes between Petitioners and their lessee concerning the terms of the lease that may govern the well site, and the Board therefore cannot review Petitioners' objections based on the lease. General concerns regarding the enforcement practices or capabilities of the State of Michigan, which are not linked to any condition of the permit, also lie beyond the limits of the Board's role in reviewing a UIC permit decision. The Board declines to review Petitioners' objections based on alleged conduct of other well operators, because such allegations are not relevant to the disposition of Federated's permit application. The contention that Federated violated the law by connecting piping to the well on

Petitioners' property (before obtaining a permit) does not justify denial of this permit; activities like those alleged are matters normally addressed by the Region, as appropriate, in an enforcement context. Petitioners' contentions regarding injection rate and the integrity of the well's cement casing have been addressed by Region V in a reasonable manner, and the Board finds nothing erroneous in the Region's decision with respect to those issues. The Board further declines to review this permit based on Petitioners' fear that it may be transferred and/or revised to allow for "commercial" operation at some future time; any such changes would have to be accompanied by a request for permit modification. For these reasons, the petition for review is denied.

Before Environmental Appeals Judges Ronald L. McCallum, Edward E. Reich and Kathie A. Stein.

Opinion of the Board by Judge Stein:

I. BACKGROUND

Before us is a petition for review of a decision issued by Region V of the U.S. Environmental Protection Agency, granting a permit for the operation of an injection well (designated "Valentine 3-18 SWD") in Bear Lake Township, Manistee County, Michigan. Under the permit, this well would inject fluid byproducts of oil and gas recovery operations conducted elsewhere in Michigan by the permittee, Federated Oil & Gas ("Federated") of Traverse City, Michigan. Those byproducts, commonly referred to as "brines," are extracted in the course of oil and natural gas production and separated from the oil or gas, and must then be disposed of.[1] Disposal of such fluids by deep well injection in the State of Michigan, as proposed by Federated, is regulated under a federally administered Underground Injection Control ("UIC") regulatory program promulgated pursuant to the Safe Drinking Water Act, 42 U.S.C. §§ 300h(b) and 300h-1(c), and codified at 40 C.F.R. Parts 144, 146, and 147.

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[1]As used in this opinion, "brine" refers specifically to fluids of the kind described in 40 C.F.R. § 144.6(b)(1), *i.e.*, fluids "brought to the surface in connection with * * * conventional oil or natural gas production." According to section 144.6(b)(1), injection wells used for disposal of such fluids are designated "Class II" injection wells.

The petitioners in the matter before us, James and Alice Valentine ("Petitioners"), are the owners of the land on which Valentine 3-18 SWD is located. Petitioners acknowledge having executed one or more leases authorizing oil or gas production wells to be constructed on their property, [2] but they claim that no lease they have signed can be construed as authorizing the use of their property as the site of an injection well operation. Federated is the assignee of a lease executed by the Petitioners, and Federated apparently believes that the lease authorizes it to operate an injection well on Petitioners' property.

Under the terms of the permit, Valentine 3-18 would inject brine into the Traverse Limestone formation at a depth of 1150 to 1733 feet. That injection zone is separated from the base of the lowermost underground source of drinking water ("USDW") by 366 feet of sedimentary rock strata. The permit authorizes only "non-commercial" disposal of brine -- that is, disposal of brine from Federated's own production wells[3] -- and requires Federated to comply with detailed construction, operation, monitoring and reporting provisions.

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[2]Petitioners have attached to their petition a copy of a document titled "Oil and Gas Lease," dated December 1, 1983, executed by the Petitioners as lessors and by Bob Adams & Associates as lessee. Petitioners assert that this document represents "the operative contract" for purposes of their appeal (Petition for Review at 5) -- meaning, we assume, that this is the contract under which Federated Oil & Gas now claims a right to operate Valentine 3-18 as an injection well. Petitioners make several legal arguments concerning the proper interpretation of the lease, and concerning the nature of Federated's rights under the lease. They argue, among other things, that the lease applies only to the wells designated Valentine 1-18 and 2-18, and that even if the lease applied to Valentine 3-18 it would confer no right to use that well as an injection well. *See* Petition for Review at 2, 5. For the reasons set forth in the text of this Order, the Environmental Appeals Board expresses no opinion regarding any of the issues of lease interpretation that the Petitioners have raised.

[3]The term "non-commercial" is not defined in the permit. Region V stated, however, in its response to Petitioners' comments, that the "non-commercial" limitation means that the named permittee "will not be allowed to accept brine from wells owned or operated by other companies." Response to Comments at 2. We adopt the Region's interpretation of the term "non-commercial," as used in this permit, as an authoritative reading that is binding on the Agency. *See also infra* note 8.

Petitioners submitted written comments to Region V during October 1995, following issuance of the draft permit, and the Region addressed each of Petitioners' objections at length in a letter dated November 8, 1995. The final permit decision was issued on or about November 21, 1995, and the Petitioners then submitted their petition for review. Much of the petition has nothing to do with any alleged inconsistency between the Region's permit decision and the requirements of the Safe Drinking Water Act and/or the UIC regulations. Instead, it is a plea for the Environmental Appeals Board to adopt a "broader view" of the UIC permit review process by intervening, on Petitioners' behalf, in what is essentially a private landlord-tenant dispute. Petitioners urge the Board to take on that role because Petitioners believe it would be costly for Petitioners themselves to enforce compliance with their lease through the local court system.

We recognize the obvious sincerity with which Petitioners are seeking to hold their lessee to a standard of what they regard as responsible conduct. This Board, however, simply has no authority to intervene in private contractual disputes. Moreover, to the extent that the Petitioners address matters within the scope of the Board's permit review authority, they nonetheless identify no clear factual or legal error affecting the Region's permit decision, nor any important policy matter or exercise of discretion warranting review by the Board. The petition for review must therefore be denied.

II. DISCUSSION

Under the rules governing this proceeding, a UIC permit decision ordinarily will not be reviewed unless it is based on a clearly erroneous finding of fact or conclusion of law, or involves an important matter of policy or exercise of discretion that warrants review. *See* 40 C.F.R. § 124.19; 45 Fed. Reg. 33,412 (1980). The preamble to section 124.19 states that this Board's power of review "should be only sparingly exercised" and that "most permit conditions should be finally determined at the Regional level." *Id*. The petitioner bears the burden of demonstrating that review should be granted. *See In re Brine Disposal Well, Montmorency County, Michigan*, 4 E.A.D. 736, 740

(EAB 1993); *In re Beckman Production Services*, 5 E.A.D. 10, 14 (EAB 1994).

Petitioners' fundamental contention is that they, as landowners, should be entitled to prevent an unwanted course of conduct proposed by their lessee. That contention, however, is one that Region V simply had no authority to resolve in acting on a UIC permit application, and that this Board is likewise without authority to resolve on appeal. As a general matter, 40 C.F.R. § 124.19 contemplates that the Board will review only permit "conditions" that are claimed to be erroneous. The contractual rights and obligations created under a private lease agreement are not permit conditions, and are therefore not matters on which the Board is authorized to rule. Further, with respect to UIC permit appeals in particular, it is well established that the Board will only review permit conditions claimed to violate the requirements of the Safe Drinking Water Act or of the applicable UIC regulations. As the Board has previously explained:

> "The Safe Drinking Water Act and implementing criteria and standards are designed to assure that no contaminant in an underground source of drinking water causes a violation of a primary drinking water regulation or otherwise affects the health of persons. * * * *A permit condition or denial is appropriate only as necessary to implement these statutory and regulatory requirements.*" * * * Thus, the SDWA, as enacted by Congress, and the UIC regulations promulgated by EPA pursuant to Congress' mandate, establish the *only* criteria that EPA may use in deciding whether to grant or deny an application for a UIC permit, and in establishing the conditions under which deep well injection is authorized.

In re Envotech, L.P., UIC Appeal Nos. 95-2 through 95-37, slip op. at 5 (EAB, Feb. 15, 1996), 6 E.A.D. __ (quoting *In re Terra Energy Ltd.*, 4 E.A.D. 159, 161 n.6 (EAB 1992)). Petitioners' arguments based on the terms of their lease with Federated are therefore beyond the scope

of the UIC permitting process and beyond the limits of this Board's permit review authority. *See Brine Disposal Well*, 4 E.A.D. at 741; *In re Suckla Farms, Inc.*, 4 E.A.D. 686, 695 (EAB 1993). As we have explained in several of our previous cases:

> EPA is simply not the correct forum for litigating contract- or property-law disputes that may happen to arise in the context of waste disposal activity for which a federal permit is required. These disputes properly belong in a court of competent jurisdiction.

Envotech, slip op. at 20 (quoting *Brine Disposal Well*, 4 E.A.D. at 741); *accord, Suckla Farms*, 4 E.A.D. at 695.[4]

Because we have no authority to rule upon strictly private matters, the task before us is to identify which, if any, of Petitioners' objections raise issues that fall within the legitimate confines of our jurisdiction. In that regard, we note as an initial matter that some of the Petitioners' objections are so lacking in specificity that we are unable to consider them on the merits. As we have consistently held, "a petition for review must contain certain fundamental information in order to justify consideration on the merits." *Envotech*, slip op. at 9 (quoting *In re Beckman Production Services*, 5 E.A.D. 10, 18 (EAB 1994)). In particular, 40 C.F.R. § 124.19 requires a petition for review to include, at a minimum, "two essential components: (1) clear identification of the conditions in the permit [that are] at issue, and (2) argument that the conditions warrant review." *Beckman*, 5 E.A.D. at 18.

Moreover, it is not enough for a petitioner merely to make reference to comments that were previously submitted to the Region, and to which the Region has already responded. Rather, "in order to

[4]We would also emphasize that the regulations quite explicitly state that the issuance of a UIC permit "does not convey any property rights of any sort," nor does it "authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations." 40 C.F.R. § 144.35(c).

obtain review of a contested permit condition, a petitioner must demonstrate why the Region's response to a particular objection or set of objections is clearly erroneous or otherwise warrants review." *In re Suckla Farms, Inc.*, 4 E.A.D. 686, 700 (EAB 1993).[5] Therefore, although the Petitioners have included with their petition a complete copy of their comments on the draft permit, the Board will address only matters as to which a minimally sufficient claim of error actually appears in the text of the petition for review.

We have been able to identify six such arguments, which can be summarized as follows:

(1) Well operators other than Federated have allowed contamination of the Petitioners' drinking water supply in the past;

(2) The State of Michigan cannot be trusted to monitor Federated's compliance with the conditions of this permit;

(3) Federated connected piping to the Valentine 3-18 well before obtaining a permit, thereby demonstrating its disregard for regulatory requirements;

(4) The permit is legally inadequate because it does not limit the allowable injection rate;

[5]We recognize that the Petitioners in this case are not represented by counsel. As in previous cases of this nature, we have endeavored to construe Petitioners' objections generously so as to identify the substance of their arguments, notwithstanding the informal manner in which those arguments are presented. However, "[w]hile the Board does not expect or demand that [pro se] petitions will necessarily conform to exacting and technical pleading requirements, a [pro se] petitioner must nevertheless comply with the minimal pleading standards and articulate *some* supportable reason why the Region erred in its permit decision." *Beckman*, 5 E.A.D. at 19.

(5) Injection into Valentine 3-18 should not be authorized because the cement used in constructing the well is not sufficiently dense to provide an effective casing; and

(6) Even though the permit is nominally for "non-commercial" disposal, it could be sold and then used by the purchaser as authority to undertake "commercial" disposal -- placing the Petitioners' water supply at even greater risk.

Each of those contentions will now be examined. [6]

A. Conduct of Other Operators

In their comments on the draft permit, the Petitioners asserted that the operation of another well on their property, Valentine 1-18, had caused their drinking water supply to be contaminated by petroleum byproducts during the late 1970s. Petitioners' Comments on the Draft Permit at 7. They further asserted that they had just finished digging a new drinking water well in the spring of 1995, and that if Valentine 3-18 were somehow to contaminate the new well "it will [become] very difficult to locate a safe site" for yet another drinking water well. *Id.* at 8.

The Region's response to comments indicates that Valentine 1-18 is not an injection well and, consequently, EPA has had no occasion to become involved in regulating the operation of that well. However, the Region states that it contacted the Michigan Department of

[6]The petition for review also refers to a concern that the issuance of this permit might lead to increased traffic congestion in the vicinity of Petitioners' property. Petitioners did not raise that issue in their comments, however, and the issue is therefore not reviewable on appeal. *See* 40 C.F.R. § 124.19(a) (petitioners must demonstrate that any issue presented for review was, "to the extent required by these regulations," previously raised during the public comment period); *id.* § 124.13 (commenters "must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period"). EPA, in any event, has no legal authority to deny a UIC permit based on local land-use or zoning considerations such as the traffic situation cited by Petitioners.

Environmental Quality in reference to the contamination allegedly arising from Valentine 1-18, and was told that no such allegation had ever been brought to the Department's attention. Region V proceeded to point out, in any event, that instances such as those cited by the Petitioners, involving the alleged contamination of drinking water sources during the 1970s, were among the factors that prompted EPA's development of the Underground Injection Control regulatory program in 1983 and 1984. Response to Comments at 4. Owing to those regulatory requirements, the Region stated, the UIC permit provisions applicable to Valentine 3-18 should ensure that that well "is constructed and will be operated in such a manner as to confine the injected fluids to the permitted interval and prevent the migration of any fluids into or between USDWs." *Id*. Finally, the Region observed that in the event of noncompliance with regulatory requirements or permit conditions, statutory authority exists for EPA "to require owners/operators to clean-up any contamination due to injection, and/or supply alternative water supplies." *Id*.

The permit includes numerous provisions designed to safeguard against future disruption of any nearby drinking water source. For example, the permit requires Federated to demonstrate the well's mechanical integrity before any injection will be allowed to commence. Permit at 6. The permit further requires Federated to "maintain" the well's mechanical integrity so as to ensure compliance, at all times, with the regulatory requirements concerning mechanical integrity that are set forth in 40 C.F.R. § 146.8. Injection must cease if a loss of mechanical integrity becomes evident at any time during the well's operation, and may thereafter be resumed only with the Region's approval. Permit at 9. Demonstrations of the well's mechanical integrity must be performed at least every five years, and additional demonstrations may be required by the Region at any time upon written notice to the permittee. *Id*. The permit as a whole will also be reviewed at least every five years. Permit at 1.

The permit allows injection only into a formation that, within a one-quarter-mile radius of the well, is separated from any

underground source of drinking water by a "confining zone" free of known open faults or fractures. Permit at 10. The well itself must be cased and cemented to prevent movement of any fluids into or between underground sources of drinking water, and must be equipped with fittings that will enable EPA to measure the wellhead injection pressure. *Id*. The permit expressly prohibits any injection "at a pressure which initiates fractures in the confining zone or causes the movement of injection or formation fluids into or between underground sources of drinking water." Permit at 11. The permit, in addition, imposes extensive monitoring and reporting requirements, and incorporates a plugging and abandonment plan to which the permittee is required to adhere. *Id*. at 11-14 and Attachment B.

In their petition for review, Petitioners merely restate their original objection concerning misconduct by other well operators and complain, in particular, that "our field was repeatedly turned into a lake of spent brine" by one prior operator of Valentine 1-18. Petition for Review at 4. For obvious reasons, however, that contention does not demonstrate that the Region erred by granting a UIC permit to Federated with respect to Valentine 3-18: The conduct complained of was not that of Federated; the well complained of was not subject to regulation under the UIC regulatory program; and, most fundamentally, the objection is wholly unrelated to any condition of the permit at issue in this case. In other words, the Petitioners have not identified any error in the Region's basic response to their original comment -- namely, that if constructed and operated in compliance with the proposed permit, Valentine 3-18 can be expected "to confine the injected fluids to the permitted interval and prevent the migration of any fluids into or between USDWs." We therefore deny the petition for review insofar as it is based on the alleged misconduct of "careless prior operators" (Petition for Review at 2) in connection with other wells on Petitioners' property.

B. Fear of Lax Enforcement by the State

In the petition for review, Petitioners repeatedly insist that they have no confidence in the ability of the State of Michigan's regulatory

authorities to ensure compliance with the requirements of Federated's permit. According to the Petitioners, Michigan has yet to achieve an adequate "level of sophistication * * * in monitoring Oil field operators"; rather, Michigan "has allowed * * * numerous 'fly by night' operations to act with little oversight." Petition for Review at 3.

Like the objection we have already addressed, this objection does not challenge the validity of any particular provision of the Federated permit. It is, instead, a general statement of concern regarding the administration of an entire regulatory program throughout the State of Michigan. As such, it fails to satisfy a basic prerequisite for obtaining Board review under 40 C.F.R. § 124.19, namely, the identification of a specific permit term that is claimed to be erroneous. *See Brine Disposal Well*, 4 E.A.D. at 746 (review denied where petitioner merely alleged a generalized concern over EPA's ability to enforce compliance with UIC regulatory requirements). The Board has the authority to examine specific provisions of a permit that might tend to make subsequent enforcement of the permit more or less effective -- monitoring and reporting requirements, for example -- but no such provisions have been challenged in this case. The Petitioners' request for review based on this objection is, accordingly, denied. [7]

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[7]The Petitioners' objection is also misdirected because EPA itself, rather than the State, is primarily responsible for enforcement of UIC regulatory requirements in Michigan. As we explained in *Envotech*, Region V has ample legal authority to enforce such requirements:

> [A] violation of any permit condition is a potential ground for an EPA enforcement action or an action to terminate the permit. SDWA § 1423, 42 U.S.C. § 300h-2; 40 C.F.R. § 144.40(a)(1). EPA can also sue for injunctive relief if [the permittee] violates its permit or any other underground injection control regulation. *See* SDWA § 1423(b), 42 U.S.C. § 300h-2(b).

Envotech, slip op. at 17 n.19. In addition, EPA has broad "emergency powers" under SDWA § 1431, 42 U.S.C. § 300i, that it can invoke even in the absence of any permit violation, whenever a contaminant is likely to enter a USDW and "may present an imminent and substantial endangerment to the health of persons." EPA can also terminate

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a permit during its term if EPA determines "that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination." 40 C.F.R. § 144.40(a)(3); *see also Envotech*, slip op. at 18 n. 19. Finally, we note that Petitioners themselves are statutorily authorized to bring a civil judicial action, under 42 U.S.C. § 300j-8(a), to abate any violation of the Safe Drinking Water Act that may occur in connection with the operation of this well. *See Suckla Farms*, 4 E.A.D. at 696 n.16.

C. Permittee's Alleged Disregard for Regulatory Requirements

Petitioners have alleged that Federated connected piping to the Valentine 3-18 well before obtaining a permit. They acknowledge that Federated disconnected the piping when requested to do so, and they do not allege that any fluid was injected on the occasion to which they refer. They do argue, however, that the incident reflects an attitude of "total disregard [by Federated] for regulations and laws" governing the operation of an injection well, and that it therefore justifies the denial of Federated's UIC permit application. Petition for Review at 2.

Although Petitioners' allegation, if true, would indeed highlight the need for appropriate oversight by the Region in assuring compliance with this permit, it is nonetheless firmly established that enforcement of a carefully written permit -- rather than denial of a permit for which an applicant is otherwise eligible -- is "the primary means of deterring future noncompliance" with regulatory requirements. *In re California Thermal Treatment Services*, 3 E.A.D. 88, 91 n.8 (Adm'r 1990). *Accord*, *In re Puerto Rico Electric Power Authority*, PSD Appeal No. 95-2, slip op. at 8 n.8 (EAB, Dec. 11, 1995), 6 E.A.D. __; *In re Laidlaw Environmental Services*, 4 E.A.D. 870, 883 (EAB 1993); *Beckman Production Services*, 5 E.A.D. at 22. As we stated in *Beckman*, "[s]hould [the permittee] fail to comply with the terms of its permit it may be subject to an enforcement action or permit revocation proceeding." *Beckman*, 5 E.A.D. at 22. *See also supra* note 7 (discussing enforcement mechanisms available to EPA and to private citizens under the Safe Drinking Water Act and the UIC regulations). Accordingly, Petitioners' allegation does not establish clear error on the part of Region V, nor does it otherwise invalidate the decision to grant Federated's permit application.

D. Failure to Regulate Injection Rate

In their comments on the draft permit, the Petitioners expressed concern regarding the absence of any provision expressly limiting the permissible injection rate for Valentine 3-18. Petitioners' Comments on the Draft Permit at 2-3. The Region responded that for an injection

well such as Valentine 3-18, which would inject small quantities of fluid into a relatively large injection zone, the preferable manner of ensuring safe operation of the well is to limit the maximum injection pressure -- exactly as this permit proposes to do. By directly regulating maximum injection pressure, the Region explained, the permit would in any event indirectly limit the permissible injection rate for Valentine 3-18. Response to Comments at 2.

On appeal, Petitioners contend that the Region essentially ignored their concern, "still leaving the question of responsibility for the injection rate [unaddressed]." Petition for Review at 3. That is simply not the case. Region V addressed the objection that was presented to it, explaining that an injection pressure limit offers greater protection in this context than a limit dealing expressly with injection rate. Petitioners do not argue that the Region's explanation is erroneous, and we have no reason to assume that it is erroneous. We therefore deny the petition for review insofar as it is based on the permit's alleged failure to regulate injection rate.

E. Density of Cement

Petitioners contend that a sample of cement taken from Valentine 3-18 does not appear to be dense enough to provide an effective casing. Petition for Review at 6. They raised a similar issue in their comments on the draft permit, citing a more general concern regarding "the quality and strength and integrity of the cement walls below the wellhead." Comments on the Draft Permit at 11. The Region responded to the comment by observing that test results had adequately demonstrated "that the cement is adequate to prevent fluid movement behind the casing," and by assuring the Petitioners that, in any event, by limiting the permissible wellhead injection pressure this permit should ensure that injection "will not fracture the cement sheath." Response to Comments at 6. Responding specifically to the Petitioners' contention on appeal regarding the density of the concrete used in constructing this well, the Region states that the density of the concrete is not a measure of the strength of the casing. The Region also reiterates that the integrity of the casing for Valentine 3-18 has been

adequately demonstrated, and that the integrity of the casing should be preserved by limiting the injection pressure. Response to Petition for Review at 29. The Region has adequately addressed the integrity of the cement casing in its response to comments and in its response to the petition for review, and Petitioners have identified no legal or factual error in the Region's treatment of the issue. The Region's response appears to be reasonable and Petitioners have not persuaded us otherwise. Review of this issue is, accordingly, denied.

F. Fear of "Commercial" Brine Disposal

The injection authorized by this permit is "limited to non-commercial disposal of salt water from production wells owned or operated by Federated Oil & Gas." Permit at 1. In their comments, Petitioners objected that the term "non-commercial" was not defined, *see* Comments on the Draft Permit at 3, and Region V explained that the limitation means that Federated, the permittee, "will not be allowed to accept brine [for disposal] from wells owned or operated by other companies." Response to Comments at 2.[8] On appeal, the Petitioners assert that they fully expect Federated to transfer its leasehold interest in Petitioners' property to some other entity in the future. They fear that such a transferee may then seek to use Federated's permit as authority to engage in "commercial" disposal of brine. Petition for Review at 3.

A transfer of Federated's leasehold interest would not, however, transfer the authority to engage in brine disposal under this permit. To accomplish that result, Federated would actually have to transfer the *permit*; and in order to transfer the *permit*, Federated would, among other things, first have to provide notice of the proposed transfer to Region V's UIC Section at least thirty days in advance. *See* Permit at 5; 40 C.F.R. § 144.38; *id.* § 144.51(l)(3). Such notice would provide

[8] For all purposes associated with this particular permit, we adopt the Region's interpretation of the term "non-commercial" as an authoritative reading that is binding on the Agency. *See In re Austin Powder Co.*, RCRA Appeal No. 95-9, slip op. at 7 (EAB, Jan. 6, 1997), 6 E.A.D. __; *In re Amoco Oil Co.*, 4 E.A.D. 954, 981 (EAB 1993).

the Region with grounds for modification or for "revocation and reissuance" of the permit, either of which would address both the identity of the proposed transferee and such other permit amendments as would, in light of the proposed transfer, be necessary to ensure continuing compliance with the Safe Drinking Water Act. *See* 40 C.F.R. § 144.38(a); *id*. § 144.51(l)(3).

A proposal to transfer this permit would trigger Regional review to ensure compliance with applicable regulatory requirements. Likewise, a proposal to amend the permit so as to authorize "commercial" brine injection would trigger Regional review to ensure compliance with applicable regulatory requirements. *See* 40 C.F.R. § 144.39(a); *id*. § 144.41(e).[9] In these circumstances, Region V did not clearly err by issuing a permit to Federated notwithstanding the Petitioners' concern that Federated, at some future time, may seek to transfer the permit or to engage in "commercial" disposal.

III. CONCLUSION

For these reasons, the petition for review is denied in all respects.

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[9]Because Petitioners' objection refers to a purely hypothetical situation, and because the Region has had no occasion to consider how it might respond if ownership or operational changes of the kind foreseen by the Petitioners were actually to be proposed, we need not examine the procedural implications in great detail. We need not consider, for instance, whether a proposal to undertake "commercial" disposal under this permit could under any circumstances be addressed by the Region as a "minor modification" under 40 C.F.R. § 144.41, or whether a change of that nature would "materially and substantially" alter the permitted activity and thus require public notice and public participation as described in 40 C.F.R. § 144.39. It is doubtful, in any event, that the "minor modification" procedures would be available to the Region in the scenario of greatest apparent concern to these Petitioners -- involving *both* an ownership change *and* a change from "non-commercial" to "commercial" operation. *See* 40 C.F.R. § 144.41(d) (permit modification to reflect a change in facility ownership can be treated as a "minor modification" only if the Region "determines that no other change in the permit is necessary").

So ordered.